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Allen Berger JR.

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EXAMINER

JOHNSON, BLAIR M

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/822,079
Filing Date: April 12, 2004
Appellant(s): BERGER, ALLEN

Jesus Sanchelima
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/21/09 appealing from the Office action mailed 9/25/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of the claimed subject matter is in section 5, entitled "SUMMARY OF INVENTION". This summary begins on page 4 and is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is not correct. Appellant has omitted the rejection of claim 4 under either *Leist et al* or *Berger, Jr.* in view of *Leist et al*, each in view of *Clark*.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,555,923	Leist et al	9-1996
6,062,293	Berger, Jr.	5-2000
2,738,839	Clark	03-1956

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Leist et al.

Leist et al discloses a garage door having panels, each of which being monolithic by virtue of being of one solid piece, which travel in tracks, which have upper and lower edges which are reversely folded since they have bent, curved and angled portions, and enlarged portions 34,66, and 36,68, along respective upper and lower edges of each panel which form the complementing joints for engaging with edges of adjacent panels, all of which is conventional as both shown by Leist et al and admitted by Appellant by his use of Jepson claim form. The limitation "open end members", while not specifically disclosed, is evident in the fact that the panels, including the ends, are hollow and not solid, as easily met by Leist et al. The limitation "space vertically and interiorly of the door" is an awkward recitation but nonetheless is definite and is present in the form of literal space that is interior to the door, a feature also evident in Leist et al. Leist et al further provides reinforcements 32 which are a length of two to six feet and preferably four feet (column 3, lines 1-7; column 4, line 67-column 5, line 2; column 6, lines 49--57) and are joined together to form a long reinforcement bar. See Figs. 3 and 4. Column 7,

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lines 6-14 in Leist et al clearly indicate the assembly of bars to form a continuous reinforcement member. Again, the complementing joints are considered the entire upper and lower edges, in which elements 32 are located, and which have further "folded" portions in the form of ribs that engage and hold the elements 32. Each reinforcement member 32 further has five sides as recited and as clearly seen in Fig. 4. The joints may be broadly considered to be "tongue and groove" and "shiplap" as such terms are extremely broad and easily met by elements 66 and 68.

Claims 1-4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Berger, Jr. in view of Leist et al.

Berger, Jr. discloses a garage door 10 having plural monolithic panels 12, which panels have reversely folded upper and lower edges which form complementing joints since edges of adjacent panels engage each other, and "means for securement" in the form of rollers 31 in tracks 30. The limitation "open end members", while not specifically disclosed, is evident in the fact that the panels, including the ends, are hollow and not solid, as easily met by Berger. The limitation "space vertically and interiorly of the door" is an awkward recitation but nonetheless is definite and is present in the form of literal space that is interior to the door, a feature also evident in Berger. Berger, Jr., in Fig. 5, further provides unitary reinforcement members 40', 41', which are inserted horizontally and interiorly of the complementing joints, which reinforcement members having longitudinal portions conforming to and abutting the complementing joints. Placing these members in such a confining location is taught by Leist et al who shows "reversely folded" portions adjacent 34 that firmly locate the reinforcing members in the panels

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edges. In view of this teaching, it would have been obvious to modify Berger whereby his reinforcing members are located under the reversely folded edges of the panels for such positive positioning. The joints may be broadly considered to be "tongue and groove" and "shiplap" as such terms are extremely broad and easily met by elements 14 and 15. Each reinforcement member 40' further has five sides as recited and as clearly seen in Fig. 5.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Leist et al or Berger, Jr. in view of Leist et al, as applied above, and further in view of Clark.

Clark discloses edges of panels that fit Applicant's definition of "shiplap". It would have been obvious to modify either Leist et al or Burger, Jr. to have such an edge so as to provide a different seal.

(10) Response to Argument

Argument directed toward Leist et al:

Appellant argues that the reinforcement members are not: (1)"unitary" and "uninterrupted" and (2) are not located in the joints along the edges and are not *conforming* with the joints.

Regarding (1), Leist et al provides multiple, plural bars 32, which are anywhere from two to six feet in length, that have end fittings 38 which are telescopingly received in respective ends of other bars to form one long bar for reinforcement of the panels. One of these assembled bars is located in each of the upper and lower edges of each panel. The Examiner is of the opinion that these bars are both "unitary", since they are

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telescopingly joined to make one long bar and also since "unitary" is broad and has no accepted meaning obviating this type of structural arrangement, and "uninterrupted", for the same reasons.

Regarding (2), the Examiner simply believes that the joints and edges of Leist et al constitute the enlarged portions 34, 66, and 36,68, along respective upper and lower edges of each panel. The reinforcement members have "conforming longitudinal portions...coming in abutting longitudinal contact" (claim 1) with the enlarged portions, i.e. the complementing joints. In other words, the complementing joints include the portions that contain the reinforcement members.

Again, it is pointed out that column 7, lines 6-14 in Leist et al clearly indicate the assembly of bars to form a continuous reinforcement member for providing strength.

Appellant further argues that Leist et al does not provide the "novel reinforcement of small longitudinal grooves" on the reinforcement members. However, this feature does not appear in the claims.

Regarding claim 2, Appellant argues that Leist et al does not provide five walls. Appellant's reinforcing members are tubular except that one side has a slot, thereby forming two "walls" which, with the other three sides, define the five walls. However, Leist et al provides the same structure as best seen in Fig. 4.

Regarding claim 3, Leist et al provides tongue portion 66 and groove portion 68.

Appellant does not present specific arguments in defense of claim 4.

Argument directed toward Berger, Jr. in view of Leist et al:

Appellant again argues the “conforming” reinforcement members.

Appellant argues that Leist et al teaches away from Berger since Leist et al teaches joining bars to form an assembled reinforcement member while Berger uses in single piece bar. However, this is not the teaching that is provided by Leist et al, as clearly note above. The other arguments in this section are repetitive, at best, and are adequately rebutted above.

It should be noted that, even if Appellant’s arguments regarding the combination of Berger and Leist et al are deemed to be persuasive, Berger meets the limitations of the claims 1-4 without the additional teachings of Leist et al. To this end, the following is a repeat from the rejection above:

Berger, Jr. discloses a garage door 10 having plural monolithic panels 12, which panels have reversely folded upper and lower edges which form complementing joints since edges of adjacent panels engage each other, and “means for securement” in the form of rollers 31 in tracks 30. The limitation “open end members”, while not specifically disclosed, is evident in the fact that the panels, including the ends, are hollow and not solid, as easily met by Berger. The limitation “space vertically and interiorly of the door” is an awkward recitation but nonetheless is definite and is present in the form of literal space that is interior to the door, a feature also evident in Berger. Berger, Jr., in Fig. 5, further provides unitary reinforcement members 40’,41’, which are inserted horizontally and interiorly of the complementing joints, which reinforcement members having longitudinal portions conforming to and abutting the complementing joints. The joints may be broadly considered to be “tongue and groove” and “shiplap” as such terms are

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extremely broad and easily met by elements 14 and 15. Each reinforcement member 40' further has five sides as recited and as clearly seen in Fig. 5.

Appellant has not presented arguments in defense of claims 2-4 in this section.

No argument has been presented for the rejection under Leist et al or Berger, Jr. in view of Leist et al, and further in view of Clark.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Blair M. Johnson/

Primary Examiner, Art Unit 3634

Conferees:

David Purol /DP/

Darnell Jayne /dj/